IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

RP.No. 970 of 2007(F)

AGAINST THE JUDGEMENT IN WPC.28618/2005 Dated 18/06/2007

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REVIEW PETITIONER/PETITIONER

RAJI @ RAJESWARI,
REP. BY POWER OF ATTORNEY, K.T.PRASAD,
S/O.K.T.GOPALAN, RESIDING AT 'POPE GARDEN',
NELLIKODE AMSOM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.K.PRAVEEN KUMAR

RESPONDENTS: RESPONDENTS

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1. SALEENA MATHEW, D/O.MATHAI,
THIRUVAMBADI AMSOM DESOM, KOZHIKODE TALUK,
REP.BY POWER OF ATTORNEY HOLDER, KANNAMPUZHA
JONEY ANTONY, MG.PARTNER THUSARAGIRI REAL ESTATE &
PROPERTY DEVELOPERS (PVT) LTD, CHEROOTTY ROAD,
RESIDING AT KEERTHI NAGAR, WEST HILL, KOZHIKODE.

2. DR.HOROOL M.PILLAI,
S/O.DR.N.M.PAREED PILLAI, BRICK COTTAGE,
EDAKKAD AMSOM, CHEEKKUTHAZHA DESOM, KANNUR TALUK,
KANNUR DISTRICT, WORKING AT BABY MEMORIAL
HOSPITAL, PUTHIYARA, KOZHIKODE -4.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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R.P.No.970 of 2007 in W.P.(C) No.28618 of 2005

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Dated: 28th November, 2007

ORDER

Learned counsel for the petitioner submits that the suit, O.S.No.778/01 being one for injunction, the question of identifying the suit property was of paramount importance. It was for that purpose that a commission was taken out. Serious objections have been filed to the Commissioner's report. It was to substantiate those objections that the petitioner filed the application which culminated in Ext.P6 order. The application covered by Ext.P7 was an application for cross-examining the Commissioner. The learned Munsiff, according to the counsel, was not at all justified in dismissing the two applications. Counsel for the respondent, however, justified those orders and also the judgment sought to be reviewed. I had disposed of the Writ Petition by the judgment dated 18.6.2007 observing that it is open to the petitioner to cross-examine the Commissioner and also to adduce other evidence against the Commissioner's report and the findings contained in the Commissioner's report. Considering the submissions presently addressed by the counsel for the petitioner, my judgment dated 18.6.2007 will stand modified to the extent of directing that after the entire evidence in the suit is recorded, the parties will be

heard by the learned Munsiff on the question of acceptability of the Commissioner's report and the learned Munsiff will pass orders on that question and thereafter only will take up the final hearing of the matter. If the decision of the learned Munsiff on that question is in favour of the petitioner, it is needless to mention that the learned Munsiff will pass appropriate orders on the commission issue.

The R.P. is disposed of as above.

srd **PIUS C.KURIAKOSE, JUDGE**